ಕೊಟ್ಟರೆ ಮುಂದೆ ಉಳಿದ 10% ಭಾಗವನ್ನು ಕೊಡಲು ಅವಕಾಶ ಮಾಡಬೇಕು, ಇಲ್ಲದಿದ್ದರೆ ಸರಿಹೋಗುವುದಿಲ್ಲ. ಏಕೆಂದರೆ, ಸಮಾಜದಲ್ಲಿ ಮುಂದುವರಿಯುವುದಕ್ಕಾಗಲಿ, ಆರ್ಥಿಕ ಪರಿಸ್ಥಿತಿ ಉತ್ತಮಗೊಳ್ಳುವುದಕ್ಕಾಗಲಿ ಅಥವಾ ವಿದ್ಯಾವಂತರಾಗುವುದಕ್ಕಾಗಲಿ ಗವರ್ನಮೆಂಟ್ ಸರ್ವಿಸ್ಸೇ ಮುಖ್ಯ ಆಧಾರ. ಅದರಲ್ಲಿ ಸ್ವಲ್ಪ ದಾಕ್ಷಣ್ಯ ತೋರಿಸದಿದ್ದರೆ ಈ ಜನಾಂಗ ಮುಂದುವರಿಯುವುದಿಲ್ಲ. ಆದ್ದರಿಂದ ವೈಚೇಜ್ ಕೊಡುವುದು ಬಹಳ ನೂಕ್ಕ ಎಂದು ಒತ್ತಾಯಮಾಡುತ್ತೇನೆ.

Sri Kadidal MANJAPPA.—Sir, if the Hon'ble Member who has tabled this amendment had known that the Government had fixed a percentage of appointments in the case of Depressed Class, I am sure, he would not have moved this amendment. In view of the Government Order which governs all cases of direct recruitment, this amendment is not relevant and not necessary. I assure the Hon'ble Member that the Government is always sympathetic towards the claims of the Depressed Class persons and continue to be so. In view of this assurance, I hope the Hon'ble Member will withdraw the amendment.

Sri B. HUTCHE GOWDA.—What about weightage?

Sri Kadidal MANJAPPA.—That is a diffe-rent matter altogether.

Mr. SPEAKER.—Under clause 5, page 3, there is provision. That is under consideration of the Government.

ಶ್ರೀ ಎಂ. ಚಿಕ್ಕಲಿಂಗಯ್ಯ.—ಈ ಸಂಬಂಧದಲ್ಲಿ ಬ್ಯಾಕ್‌ವರ್ಡ್ ಕ್ಲಾಸ್ ಅಂಡ್ ಷೆಡ್ಯೂಲ್ಡ್ ಕ್ಯಾಸ್ಟ್ಸ್ ಎಂದು ತೋರಿಸಬೇಕೆಂದು ಒಂದು ತಿದ್ದುಪಡಿಯನ್ನು ಕಳುಹಿಸಿದ್ದೆ.

Mr. SPEAKER.—That is not in order; do not raise it.

Sri M. CHIKKALINGIAH.—I beg leave to withdraw my amendment.

The amendment was, by leave, withdrawn.

Sri M. LINGANNA.—My doubt has not been cleared, Sir. So far as the report is concerned we are precluded from offering any remarks.

Mr. SPEAKER.—It is all over.

Sri Mulka GOVINDA REDDY (Chitaldrug).—We would like to discuss.

Mr. SPEAKER.—Only amendments or modifications.

MYSORE POLICE (AMENDMENT) BILL, 1953

AMENDMENTS MOVED IN THE COUNCIL

Motion to consider.

* **Sri H. SIDDAVEERAPPA** (Minister for Home and Industries).—Sir, I beg to move:

> "That the amendments made to the Mysore Police (Amendment) Bill, 1953, by the Legislative Council be taken into consideration."

Sir, I think this is the first time that a Bill passed by this House has been sent back for the consideration of this House by an amendment by the Upper House. I think, Sir, now this House is seized of this Bill under Article 197 of the Constitution of India which governs the procedure when this Bill is sent with an amendment by the Legislative Council. With your permission, Sir, I beg to read Article 197. It reads as follows:

> "197 (1). If, after a Bill has been passed by the Legislative Assembly of a State having a Legislative Council and transmitted to the....."

Mr. SPEAKER.—No Hon'ble Member has so far raised any point of order. Why do you presume objection and go on?

Sri H. SIDDAVEERAPPA.—I was reading that with reference to some other point. All right, I see the point.

Mr. SPEAKER.—I am sure objection will be raised. All right, you can go on. (*Laughter.*)

Sri H. SIDDAVEERAPPA.—I take the guidance from the Chair. Now, I shall confine myself, at this stage, to the relevant amendments made by the Upper House. Sir, as can be seen by the Hon'ble Members, in respect of clause 1, there is no change. Even with regard to Clauses 3, 4, 5 and 6 no change has been effected. It is only with regard to clause 2, Sir, amendments have been effected by the Upper House. Perhaps, it would be convenient if I read the relevant portions where the amendments have been effected by the Upper House

(Sri H. SIDDAVEERAPPA.)

Section 38-A in clause 2 of the Bill as passed by the Assembly was as follows:

"38-A. Control of sound or noise.—(1) If the District Superintendent or the Assistant Superintendent or any Magistrate of the First Class having jurisdiction in any area is satisfied from the report of an officer in charge of a Police Station or other information received by him that it is necessary to do so in order to prevent annoyance, disturbance, discomfort or injury or likelihood of annoyance, disturbance, discomfort or injury to the public or to any persons who dwell in the vicinity, he may, by a written order, issue such direction as he may consider necessary to any person for preventing, prohibiting, controlling or regulating the incidence or continuance in or upon any premises or place of—

(i) any vocal or instrumental music, or

(ii) sounds caused by the playing, beating, clashing, blowing or use in any manner whatsoever of any instrument, appliance, apparatus or contrivance which is capable of producing sound.

(2) The Officer empowered under sub-section (1) may, either on his own motion or on the application of any person aggrieved by an order made under sub-section (1), either rescind, modify or alter any such order:

Provided that before any such application is disposed of the said officer shall afford to the applicant an opportunity of appearing before him either in person or by pleader and showing cause against the order and shall if he rejects any such application either wholly or in part record his reasons for such rejection."

This was 38-A as passed by the Assembly. With the changes that have been effected by the Council, the clause will read as follows:

"38-A. Control of sound or noise.—(1) Subject to the general or special orders of the Magistrate of the First Class having jurisdiction in any area, the District Superintendent or the Assistant Superintendent may, if satisfied from the report of an officer in charge of a Police Station or other information received by him that it is necessary, to do so in order to prevent annoyance, disturbance, discomfort or injury or likelihood of annoyance disturbance, discomfort or injury to the public or to any persons who dwell in the vicinity, by a written order, issue such direction as he may consider necessary to any person for preventing, prohibiting, controlling, or regulating the incidence or continuance in or upon any premises or place of—

(i) any vocal or instrumental music, or

(ii) sounds caused by the playing, beating, clashing, blowing or use in any manner whatsoever of any instrument, appliance, apparatus or contrivance which is capable of producing sound.

(2) Any person aggrieved by an order of the District Superintendent or the Assistant Superintedent under sub-section (1), may appeal to the Magistrate of the First Class having jurisdiction in the area."

2 P.M.

In sub-clause (1) except the word 'may' all other things remain as they are. With regard to sub-clause (2), what has been done is, the whole sub-clause (2) has been rewritten including the proviso. Sub-clause (2) as it stood when the Assembly passed this Bill has been substituted by a different clause by the Upper House. What the Upper House has done in

sub-clause (2) is, they have taken up all the ingredients, as would be seen, in sub-clause (2) and have substituted the clause by another new clause altogether. It reads as follows :

> " Any person aggrieved by an order of the D. S. P. or A. S. P. under sub-section (1) may appeal to the Magistrate of the First Class having jurisdiction in that area."

In other words it is this. Under 38-A as passed by this House, the D. S. P. or the A. S. P. or any Magistrate of the First Class in that area, all the three officers had powers. They had concurrent powers. And further in sub-clause (2) the very same officer who passed that order had the power, either on his own motion or on the application of any aggrieved party on an order made under sub-section (1), to either rescind or modify or alter that order. There were three officers namely, the D. S. P., the A. S. P. and any Magistrate of the First Class having jurisdiction in that particular area. Now the Council has entrusted this power only to two officers, namely the D. S. P. or the A. S. P. What they have done is, on an order passed, the D. S. P. or A. S. P. cannot revise or alter his own order. That will have to be done by the Magistrate having jurisdiction in that area. Not only that ; there is another amendment effected, as can be seen by the Hon'ble House. The opening words read as follows :

> " Subject to the general or special orders of the Magistrate of the First Class having jurisdiction."

The Magistrate has the power under this clause either to direct the Superintendent or guide any of these executive officers with regard to the mode or the manner in which they have to function and exercise those powers under 38-A. That is one improvement they have made. The second is : even afterwards, if the Magistrate exercises his jurisdiction, if he so chooses, to begin with, if anybody is aggrieved, he may approach the Magistrate and then get a remedy by going in appeal. These are the two changes effected by the Council.

Then with regard to 38-B also these are the changes effected by the Upper House. Again the same supervisory power has been given to the Magistrate as can be seen from these words :

> " Subject to the general or special orders of the Magistrate having jurisdiction in any area."

That means, the Magistrate may say " licence will have to be issued " or he may either by a general or special order direct the executive officer to issue licence.

Another change that has been effected is, the word 'gazetted' has been used, because the Council thought that if the Gazetted Officer is entrusted with that power, perhaps there may be greater safety to the public. These are the only changes that have been effected in these two clauses. The other words remain as they are. There is no substantial change so far as the other ingredients of those clauses are concerned. I think, Sir, I have explained what the position is.

Sri M. V. RAMA RAO (Tumkur).—Will the Hon'ble Minister kindly inform us what were the reasons for which the Legislative Council thought that there would be more safety to the public by the use of the words 'Gazetted Officer' ?

Sri H. SIDDAVEERAPPA.—The House perhaps presumed that if there is a gazetted officer the power will be exercised by him with greater care and restraint.

Sri M. LINGANNA (Nanjangud).—Is it in conformity with one of the amendments moved in this House ? One member I think moved that power be vested with only one officer. I think that particular amendment was rejected by the Government.

Sri H. SIDDAVEERAPPA.—I do not remember at this distance of time what was moved and what was rejected.

Sri S. SRINIVASA IYENGAR (T.Narasipur).—The amendment proposed by the Legislative Council in 38-B, we can accept straightaway. But I wish to add one thing. The D. S. P. is the only officer that is authorised to license the use of the loud speaker. 'And such other gazetted officer as the

(Sri S. SRINIVASA IYENGAR.)

Government may specify in the Gazette', are the words used in 38-B. If this Act is applied to Taluk Headquarters, then in such a case it is the Amildar, who is the nearest officer. He is a gazetted officer also. And if this Act is made applicable to a sub-taluk or a hobli wherein there is Sub-Registrar, he is also a gazetted officer. The Government may therefore kindly remember the posts of the Sub-Registrar in places where there is no Amildar so that the people living in taluk headquarters or sub-taluk or a hobli may easily approach the Amildar or the Sub-Registrar for licence to use loud speaker and it will be quite easy. I submit this because, suppose we organise a public lecture wherein the loud speaker is to be used, then before I organise I must be in possession of a licence for the use of the loud speaker. In places where this Act is in force it is not easy for me to go to the D. S. P. and get the licence. Further, the D. S. P. may not pass an order in time. Even though the appeal provision is there, because the time limit is not specified and without the orders of the D. S. P. I cannot appeal. The independent power of the Magistrate has been taken away. It is subject to general control of the Magistrate, etc., etc., and under 38-B the D. S.P or any other gazetted officer as may be specified etc., etc., these are the only two officers who will grant licence. Therefore it is very hard for people living in taluk headquarters to approach the D.S.P. whose headquarters will generally be in the District and therefore it is better that the name of the Amildar is inserted in the Act itself.

Sri H. SIDDAVEERAPPA.—I can only add this much at this stage. In clause (i) sub-clause 2, Government had specified their intention that, to begin with, it is their intention to make this Act applicable to some of the specified areas wherein we find these officers and it is not the intention of the Government to straightaway make this Act applicable to the whole State to begin with.

Sri S. SRINIVASA IYENGAR.—One clarification. Have not the Government power to extend the operation of this Act throughout the State? Then, in such a case, if Government take it to their mind or feel it necessary to extend it, they can straightaway extend it. Then it is we who suffer.

Sri H. SIDDAVEERAPPA.—Take for instance that we extend the Act to T.-Narasipur. I am sure the nearest gazetted officer in that area, who is in the vicinity, will be the man that probably in the normal course of events Government would think of. Therefore I do not think there is any reason to think that any class of gazetted officer will not be thought of by the Government for vesting this power.

Sri S. SRINIVASA IYENGAR.—In the taluk headquarters it is the Amildar.

Sri H. SIDDAVEERAPPA.—What I am saying is, a gazetted officer will have to be vested with that power. A gazetted officer who can exercise the power conveniently and without causing any inconvenience to the public, probably he is to be taken into consideration and if the Amildar is the gazetted officer nearby and if he is the officer to be empowered, I do not see any reason why he should not be empowered to issue the licence.

Sri S. SRINIVASA IYENGAR.—What harm is there if the Government say the D. S. P. or the Amildar Magistrate can issue the licence? What is the harm or the trouble that the Government will experience by saying so?

Sri H. SIDDAVEERAPPA.—There was probably no need, except for this reason. Why the D. S. P. has been specially mentioned is, as soon as the Act is passed, automatically by the statute that we enact, the D. S. P. of the area will be vested and seized of that power to act. These officers that have been made mention of will have the power to act under this Act, whereas in the case of other gazetted officers they cannot have the power and they will not have the power unless specially empowered so by the Government. Therefore there is much difference. And because the D. S. P.

has been mentioned, he does not get more power than the other officer who is going to be vested with the power as and when occasion arises. The District Superintendent has been named only for the purpose of seeing that, even if the Government do not vest any power in any other officer, automatically with the Bill being placed on the Statute, he will be seized of this power. That is all the difference.

Sri S. SRINIVASA IYENGAR.—I want a little enlightenment of this Act, Sir. If the District Superintendent does not pass an order at all within a reasonable time, what is the relief for the applicant? What is the provision under which he can go in appeal? There will not be any order and so the question of appeal does not arise. What will be the position of the applicant if the D. S. P. does not pass the order granting the licence within a reasonable time? What is the relief?

Sri H. SIDDAVEERAPPA.—Clause 38 B, sub-clause (2) says: "Any person aggrieved by an order of the District Superintendent or the Assistant Superintendent under sub-section(1)..."

Sri S. SRINIVASA IYENGAR.—My point is: if there is no order at all?

Sri H. SIDDAVEERAPPA.—Even if the officer deliberately or wilfully fails to pass an order...

Sri S. SRINIVASA IYENGAR.—I do not say 'wilfully' he does not pass the order.

Sri H. SIDDAVEERAPPA.—Even then, you will have the right of appeal.

Sri S. SRINIVASA IYENGAR.—Sir, an appeal can only lie against an order. When there is no order at all, where is the question of appeal? I believe Sir, I have made myself clear. An appeal will be only against an order. When the order itself has not been passed, how could there be an appeal at all?

Sri H. SIDDAVEERAPPA.—That there is no order is itself a sufficient ground for you to approach the appellate authority. That is the legal position.

Sri S. SRINIVASA IYENGAR.—Thank you, Sir, I am not a lawyer.

Sri H. SIDDAVEERAPPA.—Supposing the officer who has power refuses to pass the order, supposing you ask for a temporary injunction and the magistrate concerned does not pass orders, you can appeal against that.

Sri S. SRINIVASA IYENGAR.—There is no time limit.

Mr. SPEAKER.—The appellate authority will have to call for records and that takes time. That is his apprehension.

Sri H. SIDDAVEERAPPA.—Let us see, Sir, if in the actual working, as my friend envisages, there is any insuperable difficulty, we shall then think of amendment.

Sri S. SRINIVASA IYENGAR.—We hope there will be no difficulty.

Mr. SPEAKER.—They may not happen these days.

Sri K. PATTABHI RAMAN (Kolar).—Sir, may I just offer a few remarks, Mr. Speaker? I think the difficulty envisaged by my Hon'ble friend from T.-Narasipur is certainly not met by enacting 38B as has been passed on to us by the Legislative Council. The difficulty is still there. What 38B (2) says is:

> "(2) Any person aggrieved by an order of the District Superintendent or by such other Gazetted Officer empowered by Govrnment under sub-section (1), may appeal to the Magistrate of the First Class having jurisdiction in the area."

It makes no other change in the original, except by adding the words 'such other gazetted officer'. Now the difficulty which was there in the original 38B continues to be there by the new 38B also. Therefore, there is no solution. I think, as the Home Minister was saying, that if a person who should exercise his jurisdiction delays or refuses to exercise his jurisdiction in time. I do not think that we are powerless. That cannot be remedied by simply accepting 38B as has been passed by the Legislative Council. That has to be considered independently of the present Bill.

Sri S. SRINIVASA IYENGAR.—Yes, that is my point. It must be considered.

Sri H. SIDDAVEERAPPA.—Any aggrieved party has a solution. My

(Sri H. SIDDAVEERAPPA.)

friend cannot continue under the feeling that there is no remedy. If an officer who is empowered to exercise power refuses to exercise that power, under the Constitution there are various remedies open to the aggrieved parties.

An Hon'ble MEMBER.—Writs from the High Court?

Sri M. V. RAMA RAO (Tumkur).—May I take it that the amendment has been moved by the Hon'ble the Home Minister, Sir?

Sri L. SIDDAPPA (Channagiri).—I do not know whether it is the view that these amendments have got to be accepted here. What exactly is the attitude of the Government to these amendments made in the Upper House, we do not know.

Mr. SPEAKER.—Motion moved:

> "That the amendments made to the Mysore Police (Amendment) Bill, 1953 by the Legislative Council be taken into consideration."

Sri M.V. RAMA RAO.—Sir, I must say that the amendments which the Legislative Council have passed to improve the language of clause 2 of this Bill while substituting clause 38A and clause 38B have been so worded as to convey a different sense and a different meaning and a different order of priorities in the discharging of official duties by the Magistrate and by the Police. These changes, I must say, do not effect such improvement in the Bill as this House has a right to expect from a revising chamber, a second Chamber, a Council of Elders and a House in which more time was taken in deliberating upon the provisions of this Bill than this House had occasion to take. It is with very great hestitation that I offer these remarks because, while I am second to none in giving the respect that is due to our Second Chamber from the Members of this House, I cannot fail in my duty by omitting to point out that where we have erred or where we have failed to rectify the defects because we have probably not noticed them in time, they too seem to have done the same, and the manner in which these clauses have been dealt with does not, I think, enable the Government to flatter itself that its objects have been more adequately fulfilled by these amendments.

Sir, this clause 38A that has been amended in the Upper House has been read out to the House by my friend the Home Minister. He pointed out with great emphasis that while the initial portion of sub-clause (1) of clause 38A has been worded differently, the other portions of that sub-clause have been kept intact and that no changes had been effected in the ingredients of whatever is the matter that is dealt with by clause 38A. I should like this House to reflect upon the adequacy or effect of this changed wording. This clause says:

> "38A (1) Subject to the general or special orders of the Magistrate of the First Class having jurisdiction in any area, the District Superintendent or the Assistant Superintendent may, if satisfied from the report of an officer in charge of a Police Station or other information received by him that it is necessary to do so in order to prevent annoyance, disturbance, discomfort or injury or likelihood of annoyance, disturbance, discomfort or injury to the public or to any person who dwell in the vicinity, by a written order, issue such direction as he may consider necessary to any person for preventing, prohibiting, controlling or regulating the incidence or continuance in or upon any premises or place of—
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> (i) any vocal or instrumental music, or
>
> (ii) sounds caused by the playing, beating, clashing, blowing or use in any manner whatsoever of any instrument, appliance, apparatus or contrivance which is capable of producing sound."

I am sure the Home Minister does not entertain any doubt that the objective which this House has and the objective which the other House has are the same as that which the Home Minister himself has in moving this Bill. I am sure there is no need for me to try to dispel any doubt in his mind about our common object, if I may use that expression in a good sense. My friend the Home Minister for whose experience in law and legal matters I have considerable admiration, I am sure, will agree with me when I point out to him that Clause 38-A does not confer any authority on the Magistrate to pass any order. Is that what we want to do? What is the authority under which the First Class Magistrate is going to make this general or special order? It is true that this is a reflection upon ourselves more or less because this express authority has to be conferred upon the Magistrate or the Police officer by the use of words specifically empowering him to do or omit to do a thing. I am not raising a point merely in order to take the time of the House or to show off that I can advance certain arguments which are at variance with the import of these clauses. I am trying to convince the Home Minister and the House that, in enacting this law, it should not be made to appear when action is taken and the legality of it is considered before the law courts, that general or special orders which a Magistrate or a Police Officer has passed under the provisions of this law were passed without any jurisdiction because no express authority has been conferred on the Magistrate under the Police Act or under any other law for the time being in force for making those general or special orders. What is the authority I should like to know in the exercise of which the First Class Magistrate is going to make those general or special orders?

Now, that this point has substance will be conceded by the Home Minister if I can persuade him to look along with me into the other provisions of the Police Act and see that wherever any Magistrate is expected or required under the provisions of the Police Act to exercise any power or authority to do any act or to give any direction it is expressly stated so in the opening words of the section of the Police Act. I should like to point out that in Section 38 of the Police Act after which these Clauses 38-A and 38-B will have to be incorporated the language used is significant. As a matter of fact even in Section 37 of the Police Act, Discontinuance of Brothels, the language is as follows:—

> "On complaint being made to a Magistrate of a district or of a sub-division that any house in a town or village in his district or sub-divison to which the Government has by notification extended this section is used as a common brothel or lodging-house or place of resort for prostitutes or disorderly persons of any description, to the annoyance of the respectable inhabitants of the vicinity, the said Magistrate may summon the owner or tenant of the House to answer the complaint, and on being satisfied that the house is so used may order the owner or tenant, within a reasonable period which shall be set forth in the order, to discontinue such use of it."

Such express authority is conferred on the Magistrate by words. And if my friend will look into section 38 he will find:

> "If the Magistrate of the district or a First Class Magistrate or the District Superintendent of Police has reason to believe that any building, enclosure, room, place or vehicle is used as a common gaming-house, he may either himself enter, or by his warrant give authority to any Police Officer above the rank of a Constable to enter... .."

That authority is expressly conferred on him by the words of the section. Then in Section 39 of the Police Act with the provisions of which and the use and abuse of which many Members of this House are fairly familiar,

(Sri M. V. RAMA RAO.)

especially my friend Sri Pattabhi Raman—the language is:

> "The Magistrate of the district, or in his absence and subject to his order, any Magistrate of the first class having jurisdiction in any town or village and present therein or in the neighbourhood thereof, may, whenever and for such time as it shall appear necessary, by a notification publicly promulgated or addressed to individuals, prohibit in such town or village or the vicinity thereof the carrying of arms, cudgels or other weapons, the carrying, collection and preparation of stones or other missiles....."

Then, again in Section 40 of the Police Act:

> "In order to prevent an impending or apprehended riot or grave disturbance of the peace, the Magistrate of the district, or, in his absence and subject to his control, any Magistrate of the First Class having local jurisdiction, may temporarily close or take possession of any building or place, and may exclude all or any persons therefrom....."

In any section in the Police Act under the provisions of which a Magistrate has to exercise any authority, to give any directions or to issue any orders, the power to issue those directions, to make those orders or to do any other act is expressly conferred on the Magistrate by the use of specific words in that behalf. That is a matter which is not one of mere form but is really a matter of substance because, unless that power is expressly conferred on the Magistrate, merely using the words "Subject to the general or special orders of the Magistrate of the First Class having jurisdiction in any area" is not sufficient and cannot in law clothe the Magistrate with authority to make such general or special orders. The Magistrate himself will not know under what provision of law he has to make general or special orders. Who has to invest him with powers if not this law nor any other Section of the Police Act? Therefore, let us invest the Magistrate with express authority. As a matter of fact, I should like to say while we are talking of Magistrates and Police Officers that in regard to the controlling of noise made by loud speakers or amplifiers or megaphones or other appliances or contrivances or apparatus or other things, my opinion is that this is essentially Police function and to the extent to which we try to look at it from a different point of view and want that the use of loud speakers should be regulated or controlled or the nuisance abated by magisterial or judicial action we are placing a wrong emphasis on the functions of the magistracy and the judiciary. This is essentially, I repeat, a police function and it is the police officer who should be enabled by proper legislation on our part to exercise those preventive functions efficiently and without harassment to the general public. Therefore we need place no undue emphasis upon the place at which the expression 'First Class Magistrate' appears in these clauses or the order of priority as between the First Class Magistrate and the District Superintendent or the Asistant Superintendent of Police. As a matter of fact, this House will remember that Clause 38-A as originally passed in this House before the amendment was made in Legislative Council read: "If the District Superintendent or the Assistant Superintendent or any Magistrate of the First Class having jurisdiction in any area is satisfied", etc., That is how we as a matter of fact, passed this law.

2-30 P.M.

It would appear on reflection that appropriate precedence should be given to the First Class Magistrate. After all, Sir, most of our First Class Magistrates except those few who happen to be Subordinate Judges exercising civil jurisdiction are really Executive Magistrates. They are Revenue Officers, probably Assistant Commissioners, invested with powers of First Class Magistrates and presiding over First

Class Courts. Now, as between the Revenue Officer who if he had not been a Magistrate would merely have been an Assistant Commissioner and the District Superintendent of Police who if he had not been a member of the Indian Police Service would be no more than an Assistant Commissioner himself and the Assistant Superintendent of Police who in similar circumstances and for the same reasons would also be only an Assistant Commissioner likewise, what is the order of precedence or priority? None whatsoever. In fact there is really no question of the Magistracy or the Judiciary being compared or contrasted with the Police Officers so far as this matter is concerned. The appropriateness or otherwise of putting the Magistrate lower down may be a point on which rectification may have been properly made. While I would not dispute that the Magistrate of the First Class having jurisdiction in any area should be put down first before the District Superintendent of Police or the Assistant Superintendent of Police, as the case may be, I really do not think that the clause as redrafted by the Legislative Council will satisfy the purpose, which the Home Minister and I and every Member of the House have in view because it misses the essential point that the authority is not conferred by this Section upon the Magistrate for making these orders. Therefore, we must expressly confer these powers on the Magistrate or the District Superintendent of Police or the Assistant Superintendent of Police. What this clause says is:

> "Subject to the general or special orders of the Magistrate of the First Class having jurisdiction in any area, the District Superintendent of Police or the Assistant Superintendent of Police may, if satisfied from the report of an office in charge of a Police Station or other information received by him that it is necessary to do so in order to prevent annoyance, disturbance, discomfort or injury or likelihood of annoyance, disturbance, discomfort or injury to the public or to any persons who dwell in the vicinity, by a written order, issue such direction as he may consider necessary to any person for preventing prohibiting, controlling or regulating incidence or continuance in or upon any premises or place of any music, sound or noice."

It is perfectly right. The intention is very good. But good intentions are not ni themselves sufficient to reach the objective. Now, it is necessary that we should prescribe a certain method and manner for the communication of such orders, the service of such orders upon the persons affected thereby. My friend the Home Minister will certainly agree with me that the procedure which is prescribed by the Code of Criminal Procedure for the service of a notice or an order should be sufficient in the present case. We must clearly prescribe the manner in which the order should be served on the person concerned. Otherwise, it will lead to all kinds of difficulties and inconveniences. My friend the Home Minister will agree with me if I point out that Section 134 of the Code of Criminal Procedure which deals with the service of a notification or an order is a thing which will throw some light upon the necessity for our rectifying the law on that point. Section 134 of the Criminal Procedure Code says:

> "The order shall, if practicable, be served on the person against whom it is made, in the manner herein provided for service of a summons. If such order cannot be so served, it shall be notified by proclamation, published in such manner as the State Government may by rule direct, and a copy thereof shall be stuck up at such place or places as may be fittest for conveying the information to such person."

Now, the insufficiency of the service of a particular order may be taken advantage of by the person who is bent upon creating nuisance. It is within the knowledge of many Members of this House, and my friend the Home

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Minister must certainly know many instances, that by reason of the mischievous tendency of the person concerned or because of criminal proclivity or for some other reason it is possible for the concerned person to evade service. Unless we prescribe the manner in which the order, summons or notice has to be served, we shall be leaving vast scope for all kinds of little inconveniences to be experienced by persons against whom these orders are to be made on the one hand and by the officers whose duty it will be to have these orders served on the other. Therefore, I would suggest very earnestly that without assuming that we have done our best in the matter of amending these clauses we must try to do what can be done even now, so that we might make the clause as satisfactory as it is possible for all of us jointly to do. I do not suppose that anything ought to preclude us from making all these amendments ideal.

I am sure the Home Minister will not disagree if I say that in so far as these powers of making general or special orders are concerned they would be actually infructuous.

Then the other point is with regard to sub clause (2) of clause 38A. It was pointed out by the Home Minister that in the original clause as passed in this Assembly what was provided was that: "The Officer empowered under sub-section (1) may, either on his own motion or on the application of any person aggrieved by an order made under sub-section (1), either rescind, modify or alter any such order: Provided that before any such application is disposed of the said officer shall afford to the applicant an opportunity of appearing before him either in person or by pleader and showing cause against the order and shall if he rejects any such application either wholly or in part record his reasons for such rejection." Now, my friend the Home Minister also pointed out that this sub-clause has been substituted by a shorter sub-clause in the other House and that sub-clause (2) as passed in the other House reads like this:

> "Any person aggrieved by an order of the District Superintendent or the Assistant Superintendent under sub-section (1), may appeal to the Magistrate of the First Class having jurisdiction in the area."

Though I have no desire to point out the difficulties which would have remained if this clause had not been amended in the Legislative Council, it would be exceedingly interesting to make that examination. It would be found that the original clause required a magistrate on application made to him by an aggrieved person and in a case where he rejected that application to record his reasons in writing. It served absolutely no useful purpose, this recording of reasons, because no further remedy was provided for the person whose application was rejected. Therefore, the mere fact that the reasons were recorded did not in effect either provide any ground to the person aggrieved in case of the rejection of his application for a review of the order or provide him with any other remedy by way of appeal, revision or any other thing that is provided by the process of law. To that extent the rigorous requirement that the officer who rejected the application shall record in writing reasons for doing so, while it was a very clear exercise of the authority to legislate, it did not provide the aggrieved person with any additional relief or remedy. What the other House has done by substituting another clause in place of sub-clause (2) is that any person aggrieved by an order of the District Superintendent or the Assistant Superintendent under sub-section (1) may appeal to the Magistrate of the First Class having jurisdiction in the area. Now Clause 38A, sub-clause (1) provides that the District Superintendent or the Assistant Superintendent who gives any such direction will have to do so subject to the general or special orders of the First Class Magistrate having jurisdiction in the area. While the First Class Magistrate is not expressly

authorised or empowered to make this general or special order, the District Superintendent or the Assistant Superintendent who has by written order to give a direction has to give such direction subject to this general or special order. The appeal lies to the very officer who will have made this general or special order. Now, what is the nature of the general order that a First Class Magistrate can make concerning the use of a loud-speaker, I should like to know ? He can make a general order that no loud-speaker shall be used or make a special order that a loud-speaker may be used by a particular person. Apart from that, what is the kind of general order that the Magistrate could make and what is the kind of special order that the Magistrate could make concerning the use of loud-speakers ? He can say: "Sri Rama Rao shall not use a loud-speaker" ; or he may say : "the Home Minister may use a loud-speaker". What other special order can he make in regard to the use of a loud-speaker ? If such general or special order has been made by a First Class Magistrate, what are the limitations which it imposes upon the scope for the exercise of the authority vested in the District Superintendent or the Assistant Superintendent for issuing these written directions and written orders to persons circumscribing the limits within which the sound from a loud-speaker must be confined ? Now, if the Magistrate has made a general or special order and if the person against whom that order is made or the person who is afflicted by such order of the Magistrate is given further directions by the District Superintendent or the Assistant Superintendent and then this person is to go to the very Magistrate by whom the orders were issued, what kind of a process is it ? Is that the way of providing for an appeal ? Do you propose seriously to provide an appeal to the very officer who exercises this power ? It is really a sort of a review and that is precisely what was contained in the original Bill passed by this House. And if the review is not found adequate by using one set of words, it is not made any more adequate or satisfactory by merely changing the form of words and calling it an appeal instead of calling it a review. To me, it seems that these provisions for an appeal to the First Class Magistrate against the orders of the District Superintendent or the Assistant Superintendent would be inappropriate. I do not wish to use any harsh expressions. It would be exceedingly inappropriate because, as I pointed out earlier, most of these officers who exercise the powers of a First Class Magistrate have co-ordinate status in the administrative service. The Assistant Commissioner who happens to be a First Class Magistrate for the time being will be sitting in judgment over the order of another Assistant Commissioner or a Senior Assistant Commissioner who for the time being is the District Superintendent of Police. This would be inappropriate and it is not likely that the matter which is coming up in the form of an appeal would be dealt with by that officer with that detachment with which it should be dealt with. For these reasons. I think it would not be an appropriate way of dealing with this appeal provision.

Then with regard to the sound caused by any instrument which is capable of producing sound—this, I should say, is really a case of redundancy. If an instrument is not capable of producing sound, then no sound could be caused by it or by playing it. The clause says :

> "sounds caused by the playing, beating, clashing, blowing or use in any manner whatsoever of any instrument, appliance, apparatus or contrivance which is capable of producing sound."

I should like to know if there is any instrument which is not capable of producing sound but which could be so used as to produce a sound ? It is not possible. I am not trying to make the thing look funny or ridiculous. I am putting it in a very serious mood : For instance, take the Clarionet, Bag-pipe or Nagaswaram ; it is an instrument which is capable of producing sound or noise ; an expert can produce music out of it while a man like me will produce noise which will

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drive away people. But unless an instrument is designed to produce sound, no manner of handling it is likely to produce sound out of it. We cannot produce sound by using a thing which is not designed to produce sound. Therefore the use of the words 'capable of producing sound', as I said, would be redundant. While I am not quarrelling about the use of any particular set of words, I am very earnest about this: that when these clauses go into the Police Act, 1908, as amended from time to time, people should not find any 'great' difference between the original sections contained in the Act and the new sections that are introduced into it and be able to point out that these new sections do not confer specific powers upon the Police Officers or the Magistrates who are mentioned there.

Sri H. SIDDAVEERAPPA.—May I also bring to the notice of the Hon'ble Member that these are the very words used by us also while passing this Bill?

Sri M. V. RAMA RAO.—Quite so. As a matter of fact, what I was saying was this: that although we have passed the clause in some different form but retaining many of the words, now that the matter has come up before us again, ...

Sri H. SIDDAVEERAPPA.—May I bring to the notice of the Hon'ble Member that these are the very words that can be found in the Acts of Bombay, Madras and Calcutta?

Sri M. V. RAMA RAO.—I refuse to be cowed down by citations of Acts of the neighbouring States.

Sri H. SIDDAVEERAPPA.—I only wanted to say that there was no ingenuity shown by me in order to bring these words.

Sri M. V. RAMA RAO.—I did not accuse the Home Minister of any ingenuity in this matter at all. As a matter of fact, all this ingenuity proceeds from and belongs to a particular officer whose inspiration and advice seem to be at the bottom of this legislation. The Home Minister must thank the draftsman, the Law Secretary, the Legal Remembrancer or the Advocate-General, whoever he is, for advising the Government.....

Sri H. SIDDAVEERAPPA.—Any Member in charge of the Bill has to take their assistance; they cannot manage without their assistance.

Sri M. V. RAMA RAO.—In so far as the Home Minister does not claim any responsibility for the phraseology or these expressions himself.....

Sri H. SIDDAVEERAPPA.—When it comes from me, I claim it.

Sri M. V. RAMA RAO.—He will pass it on to those to whom it appropriately belongs.

Sri H. SIDDAVEERAPPA.—When it comes from them as draftsmen, I bear the entire responsibility. I am not there simply to attest and say ditto.

Sri M. V. RAMA RAO.—That is perfectly in order, Sir. He is a finished Parliamentarian and therefore, my friend will not disclaim any responsibility for whatever comes within the sphere of his own Bill. Now, what I was saying was, is it the argument of the Hon'ble the Home Minister that because certain amendments were not made in this House when the Bill was taken into consideration here and passed before it went to the other House, we are precluded from dealing with it again?

Sri H. SIDDAVEERAPPA.—My own argument would be, whatever has been stated by my friend against the Upper House, vibrates and reflects on us also because of the House having passed this Bill.

Sri M. V. RAMA RAO.—I was not so fortunate as to be present there. It was my friend's privilege and pleasure to be there and receive all those compliments. (*Laughter.*)

Sri H. SIDDAVEERAPPA.—On behalf of you also. (*Laughter.*)

Sri M. V. RAMA RAO.—Quite so. Having received their compliments and their criticism for the phraseology, it is up to us now, since the matter is before us, not to take the stand that the clause was so when it emerged from this House and, therefore, we should not go forward. After a Bill is amended by the other House and when it comes back to us in an amended form, can it be said to be proof against controversy or interpretation? What I say is, let

us make it as good as we can and if it is still possible for a person to escape in spite of all that we can do to make this section better, we cannot help it. But what prevents us from dealing with this in a manner which will do justice to the case? Sir, my friend pointed out that the enactments in force in Bombay, Calcutta and Madras have been looked at and the expressions used in those enactments have been borrowed or adopted in the drafting of this clause. After all it is not as if borrowing certain expressions from the enactment of another State would make it unnecessary to change anything in the proposed sections which are introduced now. In the Police Act as it now exists, each section by itself empowers the Police Officer or Magistrate to do a thing or to exercise any authority. We have to make very clear and specific provision for the conferring of the authority and the exercise of that authority. Why should we here be content with a citation of or comparison with a parallel enactment of Bombay, Calcutta or Madras? Why should we be satisfied upon a comparison with those enactments that the use of these words is sufficient? Besides, they are different from the words used in the Sections of the Mysore Police Act. "We cannot make any change even if it is otherwise necessary"—is that the stand? I do not think that that would be a reasonable stand. I do not know to what extent I have been able to persuade my friend the Home Minister and this House with regard to the most important point that I raised that under Clause 38-A, as passed by this Assembly or as amended by the other House, no express authority is conferred either under this or any other section of the Police Act or any other law upon the Magistrate of the First Class having jurisdiction in any area to make a general or a special order in respect of loudspeakers. That is point number one. We ought to do so by necessary modification of the words. As a matter of fact, it hurts nobody. What I wish to do is to point out to Government that here is a case where we want to invest authority in the Magistrate and we have not used the expressions which will invest the authority in him. With regard to Clause 38-B, the only chang that has been effected by the other House as was explained by the Home Minister and clarified with reference to certain questions by my friends in the Opposition benches is that the words "by such other gazetted officer as the State Government may, by notification in the *Mysore Gazette*, specify in this behalf" have been added to the original clause which provides that the licence should be granted by tch District Superintendent or by sueh other officer as the State Government may specify in this behalf. The substance of the whole affair is the addition of the word 'Gazetted' before the word 'Officer' so as to make a particular class of officer exercise the power conferred upon him by section 38 B if a notification has been issued by Government specifying that officer in the *Mysore Gazette*. Now, it is necessary for us when we deal with this matter, to be quite clear about what we want that officer to do. Is it the idea that there should be a general licence for the use of a loud-speaker so as to legalise the committing of nuisance by the use of the loud speaker at such a pitch or volume as to be a continuous disturbance or source of annoyance to the public or to the residents of the locality? I think the main purpose, the main object of this Bill is, so far as I have understood the intention of the Government in bringing it forward, to enable the Police Officers to so exercise their police authority that loud-speakers are not used so as to be a public nuisance, or cause annoyance, disturbance, discomfort or injury or thc likelihood of annoyance, disturbanee, discomfort or injury to the residens of a particular locality. Now that is an object with which, I am sure, no member of the House or of the other House has any quarrel. We are all agreed that that should be done. There is no manner of doubt whatever about that.

Then, the second thing is that some reasonable limits must be fixed within which the use of loudspeakers, megaphones and amplifying instruments should be circumscribed. It is here that both this House and the other

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House and, I believe, the public seem to have objected to the provisions of this Bill. A radius of fifty feet in the case of a loud-speaker which is installed in a residential building or a room and a radius of two hundred feet in the case of a loud-speaker installed in an open space seem to represent limits which are sufficiently reasonable. It is clear to most of us who are familiar with the conditions prevailing in cities that even within the limits prescribed by these distances it is possible to make life miserable for a neighbour. As a matter of fact, if it is lawful for me to use a loud-speaker within the limited radius of fifty feet, my neighbour who may have the misfortune of living within fifty feet of me can still be disturbed sufficiently to make life miserable for him. In so far as I see the viewpoint of the Government it is their intention to see that directions by the Police or the Magistrate should be issued in these cases. The general rule is that a person who operates a loud-speaker in his house may do so at a pitch which will not make the sound audible beyond a distance of fifty feet. That is a perfectly reasonable proposition, so far as it goes, in respect of a loud-speaker used in a house. In those cases where the sound emanating within fifty feet causes or is likely to cause annoyance, disturbance, discomfort, or injury a written order may be issued by the District Superintendent of Police or the Assistant Superintendent of Police upon information being received by him. If a person who lives within fifty feet, say twenty feet, of my house is disturbed by the noise made by a loud speaker used in my house, he has no remedy as the Section is now worded.

3 P.M.

What I wish to emphasise is that it is precisely in these cases where although the sound does not proceed beyond a radius of 50 feet it still causes disturbance to the residents of the locality who are in the vicinity, that the direction becomes necessary. And therefore if such a direction is to be issued, it should proceed upon proper grounds so as not to be a source of harassment to the person using the loud-speaker and it should specify sufficiently the grounds upon which the order is made; and that order should be served in the manner prescribed by the Criminal Procedure Code for serving notices or orders. That, in my opinion, is the proper way of dealing with the matter.

Similarly, with regard to the use of the loud-speaker in open spaces, we all know that every restaurant in a bus stand and every restaurant situated elsewhere keeps a radio or wireless receiving set and uses it in a manner which is calculated—I do not know to whom it gives delight, certainly not to those of us who would rather be out of that vicinity than near it,—to cause annoyance. The noise is so great and the volume of it is so disturbing that it is really an affliction. In fact, most of us would feel relieved if the noise is stopped. But the proprietor and the promoters seem to think that they are adding to the entertainment provided in the establishment by using the loud-speaker in such a manner. Undoubtedly that nuisance has to be abated. Where a loud-speaker is used in a building, the noise of it should not proceed beyond 50 feet. And where a person uses a loud-speaker upon any open ground, if there are no buildings situated within a radius of 200 feet from it, it should be sufficient to prescribe that the sound from the loud-speaker should not be audible beyond a radius of 200 feet. If the audibility of the sound at a distance of 200 feet is not considered sufficient for normal purposes of advertisement and such other requirements, then it would be necessary to apply for and obtain special permission for the use of the loud-speaker so as to make the noise audible beyond a radius of 200 feet. Those of us who are familiar with the arrangement of public meetings at which loud-speakers are used know that unless a separate loud-speaker is set up to serve the needs of the audience enclosed within a radius of about 150 to 200 feet, the loud-speaker arrangement will not be adequate. If the gatherilng consists of 50,000 persons, it would require a large number of amplifiers installed at proper places so

as to distribute the sound evenly and so as to make the sound audible to every part of the audience without making the sound disturb the audience collected in any one particular area. It would be reasonable to prescribe that the use of the loudspeaker in an open space should be limited to make the audibility of it not exceed 200 feet. But if, for any special occasion, it is necessary to make other arrangements, then we may safely leave it, in my opinion, to an officer such as the District Superintendent or Assistant Superintendent of Police to authorise the use of the loud speaker so as to make the sound audible beyond those limits. If in his opinion such amplification is necessary for any special purpose or special occasion, as for instance a marriage reception where some musical concert is arranged and the person thinks that it is not sufficient if the use of the loud-speaker is confined within the precincts of the premises but must be radiated throughout the place, in such instances.....

Mr. SPEAKER.—You are not moving your amendment, Sri Rama Rao ?

Sri M. V. RAMA RAO.—Not yet, Sir. I hope to furnish to the Hon'ble the Home Minister some facts so that he might understand my amendments and I hope to make him accept them even without my having to move the amendments.

Mr. SPEAKER.—Let us see after tea. The House will now adjourn for lunch and reassemble at 3-35.

The House adjourned for Lunch at Five Minutes past Three of the Clock and reassembled at Thirty-five Minutes past Three of the Clock.

[Mr. Speaker in the Chair.]

(Quorum was formed at 3-40 P.M.)

Statistics relating to Questions

Mr. SPEAKER.—Some Hon'ble Members wanted to know the number of questions which are still pending which are not answered.

Questions admitted for the March-April Session.	...	667
Questions admitted for July-August Session	...	313
Total	...	980

Questions to which replies have been furnished so far:

March-April Session	...	648
July-August Session	...	304
Total	...	952

Questions remaining unanswered:

March-April 1953	...	19
July-August 1953	...	9
Total	...	28

Of these 28, there are some 5 questions which are yet to be got printed.

As regards the Short Notice Questions :

Number tabled	...	36
Number admitted	...	20
Number of Questions sent to the Ministers for consent and answer	...	20
Number of Questions to which replies are furnished	...	8
Number of Questions disallowed by the Speaker finally	..	16
Consent not given by the Ministers	...	9
Permission refused by the Speaker	...	7

Sri M. V. Rama Rao will now resume his speech.

MYSORE POLICE (AMENDMENT), BILL, 1953.

Motion to consider (contd.)

Sri M. V. RAMA RAO (contd.).—Sir, as I was saying that the imposition of restrictions upon the use of loud-speakers, whether in a residenital building or in an open place, is essentially a matter which should be regulated by the Police ; and it should be so regulated as not to drive people to seek remedies for fancied wrongs or harassment, from law courts. It cannot be the object of the Government or of